

WILLIAM B. CHANDLER III
CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: February 9, 2006
Decided: February 10, 2006

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Re: *Estate of James W. Stewart v. Jeanne A. Baker*
Civil Action No. 2296-S

Dear Counsel:

Before the Court is defendant's motion to dismiss this case based on the plaintiff's failure to prosecute. *See* Court of Chancery Rule 41(e). This action was commenced on July 28, 2003. It alleges that Mr. Stewart, who is now deceased, was not of sound mind when he transferred certain real estate and personal property to the defendant. As relief, the complaint seeks to cancel or rescind the transfers, recovering the property for the benefit of Mr. Stewart's estate.

For reasons that are not entirely clear from the record, this case has not been litigated with the degree of vigor that ordinarily characterizes litigation in the

Delaware Court of Chancery. As the case approaches nearly its third anniversary on the Court's docket, the only noticeable activity from the file has been depositions taken by defendant of certain witnesses identified by the plaintiff. Plaintiff did file a judicial action form on April 7, 2004, requesting a trial. That was met by defendant's request for interrogatories and notices of deposition of certain witnesses. All activity effectively ceased after July 26, 2004, until defendant filed a motion to dismiss under Rule 41(e) on August 12, 2005. Plaintiff then waited a full month to file an answer to the motion to dismiss, contending that plaintiff's delay was a result of waiting for certain information to be produced by defendant and for defendant to appear for a deposition. But if plaintiff was really interested in taking defendant's deposition, it is not clear why the plaintiff did not take the ordinary step of noticing the deposition. If the notice of deposition was resisted, plaintiff then could have filed a motion to compel. Although plaintiff's lackadaisical approach to this litigation is regrettable, I decline to grant defendant's motion to dismiss for failure to prosecute. Nothing in the record suggests that the delay is the fault of the plaintiff (the administration of Mr. Stewart's estate). I thus believe it would be more equitable to afford the plaintiff an opportunity to demonstrate the merits of her claims rather than to dismiss them for an inattention to the case that may not actually be the plaintiff's fault.

Although I deny the motion to dismiss for failure to prosecute, I am on this date entering a Case Scheduling Order that will ensure this litigation comes to a reasonably prompt conclusion.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a horizontal line at the end.

William B. Chandler III

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